

does to be able to take and violate the Budget Act in that fashion and at the same time violate common sense.

Let me yield.

Mr. LOTT. I thank the distinguished Senator for yielding to me, Madam President, for a brief comment and a question.

I certainly agree with the Senator from Michigan that limiting COLA's of Social Security recipients who make over \$600 a month is the wrong approach for dealing with the budget problems we are now confronting. These are people with very limited resources.

The Senator from Michigan is absolutely right. Social Security is not causing the deficit. It is a trust fund. Social Security recipients should not be asked to pay.

So I oppose the proposal that has been put forward by the Senator from Oklahoma and the Senator from Missouri, for that reason primarily. I think they should be commended for their efforts. There are a lot of things they are trying to do that I agree with.

I support their efforts to take out some of the proposed taxes, including the Btu tax. But, I still think they have too many taxes in their proposal. I do think we need to get some control on entitlements and I support their efforts toward that goal. When I say that, I do not include Social Security.

Social Security has a separate trust fund. It was paid into. Recipients worked most all of their life, some are disabled, and many are depending on this to be able to have minimal sustenance.

So I certainly agree with the Senator on his position. I will support him on a point of order on this item if he makes it when this matter comes before us.

I would like to ask the Senator from Michigan—and solicit his support in joining me—to also knock out a provision that is in the Clinton package. It was also in the budget resolution and it would do essentially the same thing as the COLA reduction. It would attack the seniors by increasing taxes on retirees down to \$25,000 for an individual, \$32,000 for a couple. This provision would raise the marginal tax rate on their benefits by 70%. It will increase the taxable portion of their benefits from 50% to 85%. An individual earning \$25,000 is not a wealthy individual. Somebody came up with a harebrained idea—let us raise taxes on senior citizens, Social Security recipients. But, under this proposal, this money would not go to the trust fund.

No. That money would be moved over into the general account to pay for what I do not know—maybe some good things to help pay for Medicare. But, it would be the first time that we allowed taxes to be increased, the trust fund to in effect be attacked, and then used the money to pay for other programs.

I hope the Senator from Michigan will join me in opposing that blatantly unfair proposal also.

Mr. RIEGLE. Madam President, let me say to the Senator that, as a Member of the Finance Committee, which I am, that issue is at the top of my list. It is a complex issue because it is tied together with a lot of other things. I am troubled about it as well. There is another wrinkle, and that is that at any level of taxation, even if that level is to be shifted, what happens to the amount of money that is supposed to be saved? Is that going to slosh on over into the rest of the budget to be spent on other things, or is it to be credited back to the Social Security System, which it should be; if you are going to have a scheme like that, it ought to be credited back over to the system, so that the resources are not leaking away.

So you have, really, kind of a double jeopardy involved there. So I say to the Senator that he and I share a concern in that area. As a matter of fact, as we speak, I am working on the problem.

Mr. LOTT. \$32 billion is not an insignificant amount of money.

Mr. RIEGLE. Over 5 years; that is right.

Mr. LOTT. We should not have that tax increase at all. I hope the Senator will work very hard in the Finance Committee to knock that out. If he is not successful, I assure him that somebody will try; if not somebody else, I will offer an amendment to knock that totally out when it gets before the Senate, and I will be looking for the Senator's help when we make that effort.

Mr. RIEGLE. I may want to talk to the Senator about what the offset will be. When we knock these things out, we have to pay for them, and I will be interested to see what the offsets will be. We can put our head together.

I yield the floor.

Mr. MURKOWSKI. Madam President. I think it is interesting to note—

Mr. WALLOP. Will the Senator yield for half a second?

Mr. MURKOWSKI. I yield, without losing my right to the floor.

Mr. WALLOP. Madam President, I want to say this, before both Senators who have just addressed the Senate leave the floor: CBO has done an estimate, and they say that any Social Security recipient who worked his whole life receives about \$650. The cost of the COLA is \$12, \$13 a year, or \$1 per month. The Btu tax will cost that same citizen \$17 a month. I wanted to ask, what ends up being fair?

According to the administration's own figures, if you make \$800 a month, it will cost \$4 extra a month. CBO and the Joint Tax Commission said that a number of Social Security recipients—the largest number of recipients—will have to pay significantly more in the Btu tax than any of the proposals that are out there now. And the Joint Tax Commission, looking at the figures, said that, by far, the most progressive solution on the table today—I do not agree with all of the provisions of the Danforth-Boren proposal, but the most progressive proposition on the table

today, especially in terms of seniors—was not the President's proposal but the Danforth-Boren proposal.

#### THE PRESIDENT'S PROPOSAL

Mr. MURKOWSKI. Madam President, I think it is important to reflect on the discussion that has been taking place on the floor because it represents a sequence; a pattern. To examine that pattern, I think we have to go back to the administration's first proposal before this body, so-called stimulus package. It appealed to emotion. We were called upon to "make a sacrifice" as Americans. Our President asked us to "invest in America" and, clearly, that is a call that should not be taken lightly.

But as a consequence of the extended debate in this body, the American people began to understand what that "sacrifice" and "investment" meant. It was synonymous with increasing debt, because the President's proposal for paying for the stimulus plan was simply to add to the already existing deficit anticipated to be somewhere over \$300 billion. His proposal was no different than working a bum check on a checking account and hoping, that somehow, somebody else will cover your bad check.

That is what the American people were asked to do with that stimulus plan—to make an expenditure of \$16 billion, without having any way to pay for it, except by adding to the debt. And the American people have understood that, and they have responded accordingly by saying: Cut spending.

Yet, we have our President coming along with this current message, the budget message, which suggests that he is on a deficit cutting program. But, in reality, his proposal never brings the yearly deficit below \$200 billion. If you extend that proposal over 5 years, what he has done is increased the accumulated debt of this country from \$4.4 to \$5.4 trillion. So in 5 years, by the time we have accomplished his plan, we will have increased our accumulated debt by \$1 trillion.

That is where we are. Make no mistake about it. That is the true reality, if you look at his budget and project where the debt is at the end of 5 years; it goes from \$4.4 to \$5.4 trillion. One-seventh of our current budget is interest on the debt. There is not one significant effort to cut real spending, except by cutting defense and laying off soldiers.

These are the hard, cold facts, Madam President. The next issue, that has been discussed here on the floor this morning, is the issue before the House, budget reconciliation legislation, and, more particularly, the proposed \$72 billion Btu tax.

That tax is a charade, Madam President. The tax will not generate \$72 billion in new revenues even if it passes. Do you know why? Because deals have been made at the White House, and deals have been made at the Treasury

Department, reducing or eliminating certain industries that ordinarily would be taxed. If you are in the gas business, and if you are injecting gas to recover oil, you probably got an exemption. Exemptions have been granted in the petrochemical industries.

So we have seen a series of efforts made by well-meaning special interest groups to get excluded from the application of the Btu tax. Clearly, the stimulus plan and the Btu tax were not too well thought out.

Rather curiously, if one looks at the Btu tax, he finds that there was a proposal, initially, that 26 cents per million Btu would be applicable on the production of oil, gas, coal, hydro, and nuclear. That sounds equitable. But then they found they needed some more revenue, so they put a surtax of 34 cents on oil. Basically, that is moving oil into the category of a sin tax. If you are in the Northwest or Northeast, or in my State of Alaska, where it is cold and you need heat, and your only alternative is to burn oil or chop wood, you are penalized. That was the initial proposal.

Then they got some feedback that suggested that the plan put too much of a burden on people who had no other alternative. So they took the surtax off of heating oil. That is the sequence of the manner in which these proposals have been presented to the American people.

What does it do to international competitiveness, to our industries that have to pass on this higher cost of fuel oil? If they are exporting products into the market of the Pacific rim, or European markets, these additional costs due to taxes will not be borne by the competitors; they will only be borne by our side.

What does it do to our airline industry, that is struggling to have to pay an additional tax as a cost of operations? We have already seen the difficulties in our domestic airline system.

Our trucking system. The cost is going to be borne by every single segment of American industry and every single taxpayer. Do you know what the alternative to this is, and what the White House simply will not acknowledge? The alternative is not to raise taxes from energy use, but simply to cut Federal programs that are unneeded. For some reason, that does not seem to permeate the minds of those within the administration.

So what has happened, Madam President, is that we are here today debating a series of issues—stimulus, budget, Btu tax—all of which evidence shows were poorly thought out, poorly presented to the American people, and clearly did not consider the other more obvious alternative of cutting Federal spending, which is what the people of this country want most of all. And that is what the people of this country want.

#### CIVIL RIGHTS

Mr. MURKOWSKI. Briefly, Madam President, I would like to refer to another item. Earlier today the junior Senator from Washington introduced, with four other Members of this body, legislation to repeal the provision that I worked very hard to include in the Civil Rights Act of 1991 that passed on November 5, 1991. It passed this body by a vote of 73 to 22.

I must say I have the deepest respect for the junior Senator from Washington, but the arguments used in the opening statement clearly appeal to emotion rather than fact. The suggestion by the Senator from Washington that thousands of people are being denied their civil rights is not accurate, and the reality is that the *ex post facto* amendment which I offered and, as I indicated, passed this body 73 to 22, provides fair protection against frivolous retroactive litigation without weakening the rights of any workers to initiate lawsuits based on the 1991 Civil Rights Act. No workers of any race have been exempted from the 1991 Civil Rights Act, and certainly many Senators working on civil rights legislation, including, I am pleased to say, the senior Senator from Massachusetts, who supported adoption of the amendment during the consideration of the civil rights bill, could not have supported an amendment that exempted any individual from the protections of the Civil Rights Act.

In 1971, Madam President, Wards Cove, which is a fish cannery in Ketchikan, a community I happened to have grown up in, employed more minority workers in both skilled and unskilled positions than were available in the local population. Despite this fact, Wards Cove was sued for violating laws governing unintentional discrimination because 20 percent of the skilled workers were minorities while 50 percent of the unskilled workers were minorities. Plaintiffs cited separate eating and sleeping facilities as evidence of discrimination even though both arrangements were mandated by the collective bargaining agreement that the local, minority-run union sought and negotiated with Wards Cove. The class action lawsuit against Wards Cove was originally filed in 1974, and since then they have been in and out of the courts some eight times. Every court has found Wards Cove to be not in violation of the antidiscrimination laws.

The amendment that was passed by this body simply protects the Ketchikan cannery from having to go to court yet again to prove the 1991 law is not different in any significant way from the 1971 standard under which the 1970 practices have been judged to be free of discrimination. It is of no use, except to the lawyers who are trying to collect a fee by breathing life into this old lawsuit, to continue to relitigate the situation 20 years ago at this remote cannery location. It is time to focus our energies on protecting the civil rights of people currently working

at the cannery as well as other businesses like it.

This is precisely what the 1991 civil rights bill does, and my amendment in no way detracts from that objective. My provision specifically does not prevent any employee, including Wards Cove employees, from suing under the 1991 Civil Rights Act. My amendment, which passed, does not exempt Wards Cove's current hiring and promotion practices from being judged by the standards of the 1991 Civil Rights Act. My amendment does provide Wards Cove with relief from being forced into court again for the ninth time on an allegation made in 1974, 19 years and \$2 million in legal fees ago.

#### CHRONOLOGY OF THE WARDS COVE CASES

The 1971 salmon season: Plaintiff argues that Wards Cove violated anti-discrimination laws.

June 27, 1972: Complaint filed with EEOC.

March 20, 1974: Original lawsuit filed in district court, was later dismissed by the district court on technical grounds.

March 31, 1982: Ninth circuit reinstates the lawsuit.

November 4, 1983: District court finds that Wards Cove did not discriminate either intentionally or unintentionally.

The court described the employer's burden of proof and the legal standard in a disparate impact case stating where.

The plaintiff has made out a *prima facie* case \* \* \* the burden of proof shifts to the defendant to show that the practice is justified by "business necessity."

The court rejected plaintiffs' argument that the existence of a higher percentage of minorities in unskilled jobs proved discrimination. The court's findings of fact state:

The racial composition of [unskilled] workers \* \* \* is predominately nonwhite. That is so because [under the union contract] Local 37 is the primary source of [unskilled] workers and the membership and leadership of Local 37 is predominately Filipino.

The court exonerated Wards Cove of any charge of intentional or unintentional discrimination.

August 16, 1985: Ninth circuit sustained the district court opinion. Ninth circuit interpreted the Griggs Standard to mean that the burden of proof shifted to the employer once the employee established a *prima facie* case of unintentional discrimination based on disparate impact. And held that Wards Cove met the burden of proof and that the plaintiff's case was without merit.

February 23, 1987: Ninth circuit en banc concurs with the district court that the defendant has the burden of proof in an impact case, and held that disparate impact analysis is applicable to subjective employment practices. The case was sent back to the panel that originally heard the appeal.

September 2, 1987: The ninth circuit panel maintained its position that the employer has the ultimate burden of

proof in an impact case. The court cited Griggs in stating: "The employer must demonstrate the 'manifest relationship' between the challenged practice and job performance." The court also stated that statistics alone could be sufficient to support an inference of discrimination and remanded to the lower district court.

June 5, 1989: Supreme Court reversed the appeals court finding that statistics alone could not establish a prima facie case of disparate impact. The Court also ruled that the employer's burden in a disparate impact case is the burden of production, not the burden of persuasion. Remanded to district court.

January 29, 1991: District court determines that Wards Cove hired individuals for the at-issue jobs based upon their qualifications and not upon their race. The court found no reason or basis for altering any of its findings of fact or conclusions of law set forth in the 1983 decision.

Madam President, I ask unanimous consent that a compilation of the tally sheet of the vote taken on November 5, 1991, which passed 73 to 22, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Rollcall Vote No. 244 Leg.]

#### YEAS—73

Baucus, Bentsen, Biden, Bond, Boren, Breaux, Bryan, Bumpers, Burns, Byrd, Chafee, Cochran, Cohen, Craig, D'Amato, Danforth, Daschle, Dodd, Dole, Domenici, Durenberger, Exon, Ford, Fowler, Garn, Glenn, Gore, Gorton, Graham, Gramm, Grassley, Hatfield, Heflin, Helms, Hollings, Jeffords, Johnston, Kassebaum, Kasten, Kennedy, Kerry, Kohl, Levin, Lieberman, Lott, Lugar, Mack, McCain, McConnell, Metzenbaum, Mitchell, Moynihan, Murkowski, Nunn, Packwood, Pell, Pressler, Pryor, Reid, Riegle, Rockefeller, Roth, Rudman, Sasser, Seymour, Shelby, Simpson, Specter, Stevens, Symms, Thurmond, Wallop, Warner.

#### NAYS—22

Adams, Akaka, Bingaman, Bradley, Brown, Burdick, Coats, Conrad, DeConcini, Dixon, Harkin, Inouye, Lautenberg, Leahy, Mikulski, Nickles, Robb, Sanford, Sarbanes, Simon, Smith, Wellstone.

#### NOT VOTING—5

Cranston, Hatch, Kerrey, Wirth, Wofford.  
So the resolution (S. Res. 214) as amended, was agreed to.

Mr. MURKOWSKI. Madam President, I encourage my colleagues to refrain from signing on to the proposed bill by the Senator from Washington until they have viewed the merits of this case. Everybody wants to stand up for civil rights, but this is not an issue of whether or not people's civil rights are protected; every court that has looked at the facts in the Wards Cove case has found no discrimination. It's a matter of wrongful retroactive application of law. So far, six Federal circuit courts have ruled that the 1991 civil rights law does not apply retroactively. The Supreme Court has agreed to review two of those findings.

I encourage my colleagues to refrain from signing on to the bill introduced earlier today; wait to see what the Supreme Court rules, and judge this legislation by the facts, not the feelings.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

#### THE BTU TAX

Mr. LOTT. Madam President, I do want to make clear again one of the things I said a while ago about the distinguished Senator from Oklahoma, Senator BOREN, and Senator DANFORTH, from Missouri, and others, for the efforts they are making. They are trying to find an alternative that is an improvement over the Clinton tax package, and I commend them for it. I do not think they are there yet. I want them to keep working.

I understand the Senator from Oklahoma will be here in a few minutes to, in effect, defend himself on some of the questions that have been raised about his package. I want to join him in sending a message to the colleagues in the other body that will be voting on this tax issue today. I want to caution them, in fact warn them, that, yes, they are walking the plank to no avail. Yes, they are going to be voting to raise their constituents' taxes in many ways, specifically on this Btu energy tax, and they can rest assured the Senate is not going to do that.

So I say to my old buddies from the other body that I served with for 16 years, where I had the pleasure of being the whip and counting votes, get ready because you are going out there and we are going to leave you out there. Go ahead and count. The Senate is not going to buy this deal for a lot of reasons.

One of the reasons is because of the impact on seniors that the distinguished Senator from Michigan was talking about. Senior citizens, like my blessed mother in Pascagoula, MS, are going to be hit by this tax package that the House is going to be voting on today and the Senate is going to be voting on some time in June. Thank goodness we are going to get home next week and listen to the folks from the States of Illinois, Missouri, Kansas, and Mississippi. They are going to say, "You people are out of your mind in what you are doing."

Let me tell what this tax bill will do to my mother. She will probably have to pay higher Social Security taxes to get this \$32 billion they are talking about taking from seniors—and not to put in the trust fund; oh, no, we are going to move it over here. We are going to spend it in the deep, dark black hole of the general Treasury. It will be gone, never to be seen again. We will be taking it from the seniors.

But that is not the end. That is just the beginning. My mother's utility bill will go up, because the Mississippi Power Co. produces utility energy with

coal, as do the other utility companies in Mississippi. They are going to charge more. Do you think they are going to eat this tax increase? No, sir; they are going to pass it on to the senior citizens in the form of higher utility bills and gasoline. These people still have to drive to the grocery store and stand in line and pay for the gasoline for their old, used, beat-up cars.

This is insanity to talk about raising taxes on the working people of America again and on the senior citizens. They are going to feel this impact disproportionately. It is not fair.

I do not understand what happens between Jackson Hole, WY, and Jackson, MS, and when we get to Washington. When I go home, nobody comes up to me and says, "Hey, raise taxes and spend more money." And that is what President Clinton has said he wants to do. He wants to raise taxes so he can spend more. He said it. It is quoted in the Washington Post. That must be the truth, then.

No; they do not say that. They say, "Do not raise my taxes any more. I own Barnett's Restaurant in Baldwin, MS, and am barely making it. I need to go to the dentist and cannot afford it. Do not put any more regulation or bureaucracy or any more taxes on me. I cannot stand it."

"Cut spending first." Cut spending on—you take your pick. Someone said, "What would you cut spending on?" I am open. I will agree to cut spending on anything and everything except Social Security and the trust funds. They are trust funds. They are not causing the problem.

That is what I hear. Then I get to Washington and hear: Let us get a tax on this and a tax on that. When is someone going to get around in this city to doing something to encourage growth in the economy, encourage people to be able to get off these programs and be able to have a job? What we need to do is have incentives for inner city enterprise zones and targeted tax credits for businessmen and women to create jobs.

When is somebody going to get back to talking about growth in the economy and incentives and not talking about taxes that will hurt the economy and cut jobs and will put more people on these welfare programs that do not want to be there?

This tax package is just wrong; it is not the answer.

Now let me respond to some of the specific questions that people have asked me—very good legitimate questions—about the Btu tax when I have been home and in various meetings.

No. 1, what effect will the Btu tax have on unemployment?

Well, you might get a lot of different figures, but I think there is a lot of agreement it is going to cost jobs. The National Association of Manufacturers and the American Petroleum Institute estimate the loss of 610,000 jobs when this tax is fully implemented. Somebody else might have a different num-